

3. Between February 19 and March 18, 2016, Merck conferred with Dana-Farber and Freeman about whether, and under what circumstances Dana-Farber and Freeman would comply with the subpoenas. Merck and Dana-Farber and Freeman were unable to reach an agreement on whether, and to what extent, Dana-Farber and Freeman would comply with the subpoenas.

4. On March 18, 2016, the date on which Dana-Farber and Freeman were required to produce the subpoenaed documents, Dana-Farber and Freeman filed this miscellaneous action asking this Court to modify the subpoena ("Motion to Modify") (ECF No. 1) so that Dana-Farber and Freeman would be permitted to delay their compliance with the subpoenas until after certain disputed matters are resolved in *Dana-Farber Cancer Institute, Inc. v. Ono Pharmaceutical Co., Ltd. et al.*, No. 15-13443-MLW (D. Mass.) (the "Dana-Farber litigation").

5. As Merck will address separately and in more detail in its opposition to the Motion to Modify, Merck faces undue prejudice in the Delaware litigation if it cannot obtain prompt access to the documents subject to the third-party subpoenas. Merck faces a May 27, 2016 discovery deadline in the Delaware litigation. Prior to that time, it must take depositions of at least ten fact witnesses for whom the documents subject to the subpoenas are directly relevant. Most significantly, Merck is scheduled to depose Tasuku Honjo, the key inventor on the asserted patents, on April 12 to 13 of this year. Honjo is a Japanese national and Plaintiffs in the Delaware litigation have stated that these are the only dates that they will make Honjo available. Merck will be significantly prejudiced if it does not receive the Dana-Farber and Freeman documents prior to Honjo's deposition.

6. In order to expedite matters, Merck plans to file its opposition to the Motion to Modify on March 22, 2016, four days after the motion was served and well short of the 14 days to which it is entitled under the rules.

7. On March 21, 2016, Merck conferred with counsel for Dana-Farber and Freeman regarding Merck's desire for an expedited hearing. Counsel for Dana-Farber and Freeman has taken the position that this motion should be assigned to the Honorable Mark L Wolf, Senior District Court Judge, and that the hearing should be consolidated with hearings on pending motions in the Dana-Farber litigation, motions for which no hearing date has been set.

8. If a hearing date had been set in the Dana-Farber litigation that would permit Merck both to have the Motion to Modify heard and decided within the time needed for Merck to be able to conduct its needed discovery in the Delaware litigation, Merck would have no objection to having this matter referred to Senior District Judge Wolf as Dana-Farber and Freeman request. No such date has been set, however, and Merck faces significant prejudice in its preparation for the Delaware litigation if it cannot have the dispute over the third-party subpoenas with Dana-Farber and Freeman heard, decided promptly, and in accordance with a date certain.

WHEREFORE, Merck hereby requests that this Court schedule a hearing on the Motion to Modify for a date on or before March 31, 2016.

DATED: March 21, 2016

Respectfully submitted,

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/s/ Jack W. Pirozzolo

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CERTIFICATE OF COMPLIANCE WITH L.R. 7.1

Pursuant to D. Mass. LR 7.1, counsel for Merck conferred with counsel for Dana-Farber Cancer Institute, Inc. and Gordon Freeman and attempted in good faith to resolve or narrow the issues in advance of filing.

/s/ Jack W. Pirozzolo
Jack W. Pirozzolo

CERTIFICATE OF SERVICE

I hereby certify that on March 21, 2016 a true and correct copy of the foregoing document was served on counsel of record via the Court's CM/ECF system and served by U.S. Mail and e-mail to the following counsel for Dana-Farber Cancer Institute, Inc. and Gordon Freeman:

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/s/ Jack W. Pirozzolo
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